IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.MOHAN RAM

Crl.R.C.NO.1470 OF 2007,
M.P.No.1 of 2007 and 2 of 2007 in Crl.R.C.No.1470 of 2007

Mrs.Mohammed Nisa ..Petitioner

vs

Mrs.B.Kalamani
w/o late P.R.Balasubramaniam
Proprietrix
Rathinam Agencies
Ramakrishnapuram
Sathy Main Road
Ganapathy Post
Coimbatore District ..Respondent

Criminal Revision Case is filed against the order passed in C.M.P.No.5827 of 2007 in C.C.No.588 of 2006 dated 16.08.2007 by the learned Judicial Magistrate No.II, Coimbatore.

for petitioner : Mr.K.Kalyanasundaram
for respondent : Mrs.V.S.Usha Rani

ORDER

By consent the Criminal Revision Case itself is taken up for final disposal.

2. The petitioner has filed the above Criminal Revision Case challenging the correctness of the order dated 16.8.2007 passed in C.M.P.No.5827/2007 in C.C.No.588/2006 on the file of the Judicial Magistrate No.II, Coimbatore.

3. The petitioner is the accused in C.C.No.588/2006. The said Criminal Case has been instituted by the respondent herein for an offence under Section 138 of the Negotiable Instruments Act. During the course of trial in the above case the petitioner herein filed a petition under Section 210 of the Cr.P.C., seeking stay of further proceedings in the case and to call for a report of the Inspector of Police, Saravanampatti Police Station, Coimbatore who was said to be conducting an investigation

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on the complaint dated 1.2.2006 given by the petitioner against the respondent. In the said petition, the petitioner has stated that the investigation on the complaint dated 1.2.2006 filed by the petitioner was in progress. The respondent contested the said application by filing a counter statement. In the counter statement it was contended by the respondent that the respondent was not aware of any complaint filed against her before the Saravanampatti Police Station and no investigation was pending to her knowledge.

4. The learned Magistrate to ascertain as to whether investigation was pending on the complaint said to have been lodged by the petitioner called for a report from the Inspector of Police, Saravanampatti Police Station and the Inspector of Police, B9, Saravanampatti Police Station has sent a report stating that the petitioner lodged a complaint, but after investigation the same has been referred as it related to a civil dispute and he has further reported to the Court that no investigation was pending on the complaint submitted by the petitioner against the respondent. Therefore, the learned Magistrate dismissed the petition filed under Section 210 of the Cr.P.C. Being aggrieved by that the above Criminal Revision Case has been filed.

5. Heard Mr.K.Kalyana Sundaram learned counsel for the petitioner and Mrs.V.S.Usha Rani, learned counsel for the respondent.

6. Mr.K.Kalyana Sundaram, learned counsel for the petitioner submits that though cognizable offence is made out from the allegations contained in the complaint given by the petitioner against the respondent, the Inspector of Police, Saravanampatti Police Station has erroneously referred the case stating that the dispute is of a civil nature and therefore, submitted that the trial court is not correct in dismissing the petition filed by the petitioner under Section 210 Cr.P.C.

7. Per contra, Mrs.V.S.Usha Rani, learned counsel for the respondent submits that the condition precedent for staying a criminal proceeding is not satisfied in this case and hence, the learned Magistrate is justified in dismissing the petition.

8. I have heard the abovesaid submissions made by both sides.

9. For appreciating the contentions it will be useful to refer Section 210(1) Cr.P.C. and the same is extracted hereunder.

> "210.Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.-(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which

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is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

A reading of the abovesaid provision shows that during the course of the enquiry or trial by the learned Magistrate in a case instituted otherwise than on a police report, if it is brought to the notice of the learned Magistrate that the investigation is in progress in relation to the offence which is the subject matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report from police officer conducting the investigation. As stated above, admittedly, the learned Magistrate called for a report from the Investigating Officer, namely, Inspector of Police, Saravanampatti Police Station, who in his report has stated that after completing the investigation on the complaint lodged by the petitioner since it appeared that the case was of a civil nature the same had been referred as such. Thus from the report submitted by the Investigating Officer it is clear that no investigation was in progress in relation to the offence which is the subject matter of trial and therefore, the condition precedent for staying the enquiry as contemplated under Section 210 Cr.P.C. was not satisfied. The learned Magistrate rightly dismissed the petition filed by the petitioner under Section 210 Cr.P.C. If the petitioner is aggrieved by the action taken by the Investigating Officer on the complaint filed by him against the respondent it is open to the petitioner to seek appropriate remedy as is available to him under law.

10. For the reasons stated above, the Criminal Revision Case fails and the same is dismissed. Consequently, connected pending miscellaneous petitions are also dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sal

To

Learned Judicial Magistrate No.II, Coimbatore.

1 cc To Mr.K.Kalayanasundaram, Advocate, SR.63740.
1 cc To Mr.Veerakathiravan, Advocate, SR.63634.

CRL.R.C.No.1470/2007
&M.P.Nos.1 and 2 of 2007

SJ(CO)
RVL 26.10.2007

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